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02 OCT 2006

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In re Application of	:	DECISION ON
DROZ, Patrick	:	
Application No. 10/031,811	:	
PCT No.: PCT/IB00/00596	:	
Int. Filing Date: 09 May 2000	:	
Priority Date: 12 May 1999	:	PETITION UNDER
Attorney's Docket No.: CH9-1998-0047	:	
For: GEOMETRICAL PHASE OPTICAL	:	
ELEMENTS WITH SPACE-VARIANT	:	
SUBWAVELENGTH GRATINGS	:	37 CFR 1.137 (b)

This decision is in response to applicant's "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)," filed on 03 August 2006.

**BACKGROUND**

On 09 May 2000, this international application was filed, claiming an earliest priority date of 12 May 1999. A Demand electing the United States was filed on 21 October 2000 in this international application.

Accordingly, the deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 12 November 2001. This international application became abandoned with respect to the United States at midnight on 13 November 2001 (12 November 2001 was a federal holiday) for failure to pay the required basic national fee.

On 13 November 2001, applicant filed a Transmittal letter for entry into the national stage in the United States Patent and Trademark Office (USPTO), which was accompanied by, the basic national fee. No executed declaration or oath was filed at such time.

On 05 April 2002, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration complying with 37 CFR 1.497(a) and (b), identifying the application by the International application number and International filing date must be furnished within the time period set forth. The notification set a two months time limit or 32 months from the priority date for the application, whichever is later to respond, and that failure to properly respond would result in abandonment.

On 03 December 2003, the USPTO mailed applicant Notification of Abandonment (Form PCT/DO/EO/909) indicating that applicant has failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905), mailed 04/05/2002 within the time period set therein.

On 03 August 2006, applicants filed the instant petition under 37 CFR 1.137(b) and executed declaration.

### **DISCUSSION**

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (1) the proper reply by submitting an executed declaration, and (2) the petition fee set forth in §1.17(m). In this application, no terminal disclaimer is required.

With respect to item (3), there appears to be a question whether the delay was unintentional and additional information will be necessary to explain the filing the petition. The record shows that the Notification of Abandonment was mailed 03 December 2003 and applicants did not submit a petition to revive until 03 August 2006 a delay of more 3 years without elaborating why the this extensive delay should be construed as unintentional. Accordingly, pursuant to 37 CFR 1.137(b)(3), applicants are required to provide an explanation why the entire delay in filing the petition should be construed as an unintentional delay.

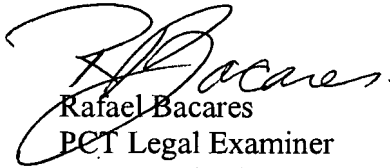
Consequently, the petition is deemed to not to satisfy requirement (3) under 37 CFR 1.137(b).

### **DECISION**

The petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.137(b) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Failure to timely submit the proper reply will result in abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in dark ink, appearing to read 'R. Bacares', is written over the printed name and title.

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